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U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MERLE FERGUSON, an individual, SUSAN  
DONOHUE, an individual, and  
WORLDWIDE FOOD SERVICES, INC., a  
Utah Corporation,

Plaintiffs,

vs.

DANIEL KORREY, an individual, and  
DOES 1-20 inclusive,

Defendants.

CASE NO. 12-CV-1037 BEN (JMA)

**ORDER GRANTING MOTION TO  
AMEND ANSWER**

[ECF No. 31]

Presently before the Court is Defendant Daniel Korrey's motion to amend his Answer. ECF No. 31. Plaintiffs did not file a written opposition as required by Civil Local Rule 7.1.e.2. The matter will be decided on the record without oral argument pursuant to Civil Local Rule 7.1.d.1.

At issue is whether Korrey was terminated by Prime Multimedia, Inc., the predecessor to Plaintiff Worldwide Food Services, Inc., in March 2006. In his Answer, filed May 29, 2012, Korrey admits that he was terminated at that time. He further admits that he was not an employee at the company in 2007. Korrey now explains, however, that he simply thought the issue of his termination not worth contesting at the outset. He has since changed his mind. He seeks to change four related admissions into denials. Complicating the matter is that both parties have a motion summary judgment pending before this Court.

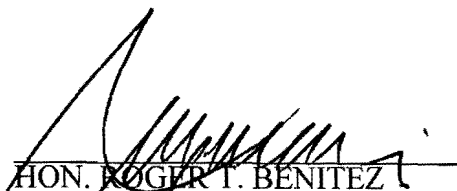
Federal Rule of Civil Procedure 15(a)(2) permits a party to amend its pleadings prior to trial

1 with leave of the court. It states that a court "should freely give leave when justice so requires." The  
2 Ninth Circuit has stated that "leave to amend should be granted unless amendment would cause  
3 prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay." *Johnson v.*  
4 *Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992).

5 The Court is reluctant to permit amendment with dispositive motions pending. However,  
6 because it is early in the case and the scheduling order's deadline for amendments had not yet passed,  
7 the risk of prejudice and delay is small. The Court will permit Korrey to amend. The hearing  
8 scheduled for December 17, 2012 is **VACATED**. The clerk shall file Exhibit 2 of Korrey's Motion  
9 to Amend (ECF No. 31) as his First Amended Answer.

10 **IT IS SO ORDERED.**

11  
12 DATED: December 11, 2012

  
13 HON. ROBERT T. BENITEZ  
14 United States District Court Judge  
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